


Legal Issues and Environmental Public Health Tracking: Lessons from Montana



Lance Gable, JD, MPH

Assistant Professor of Law, Wayne State University Law
School

Scholar, Center for Law and the Public's Health at
Georgetown and Johns Hopkins Universities

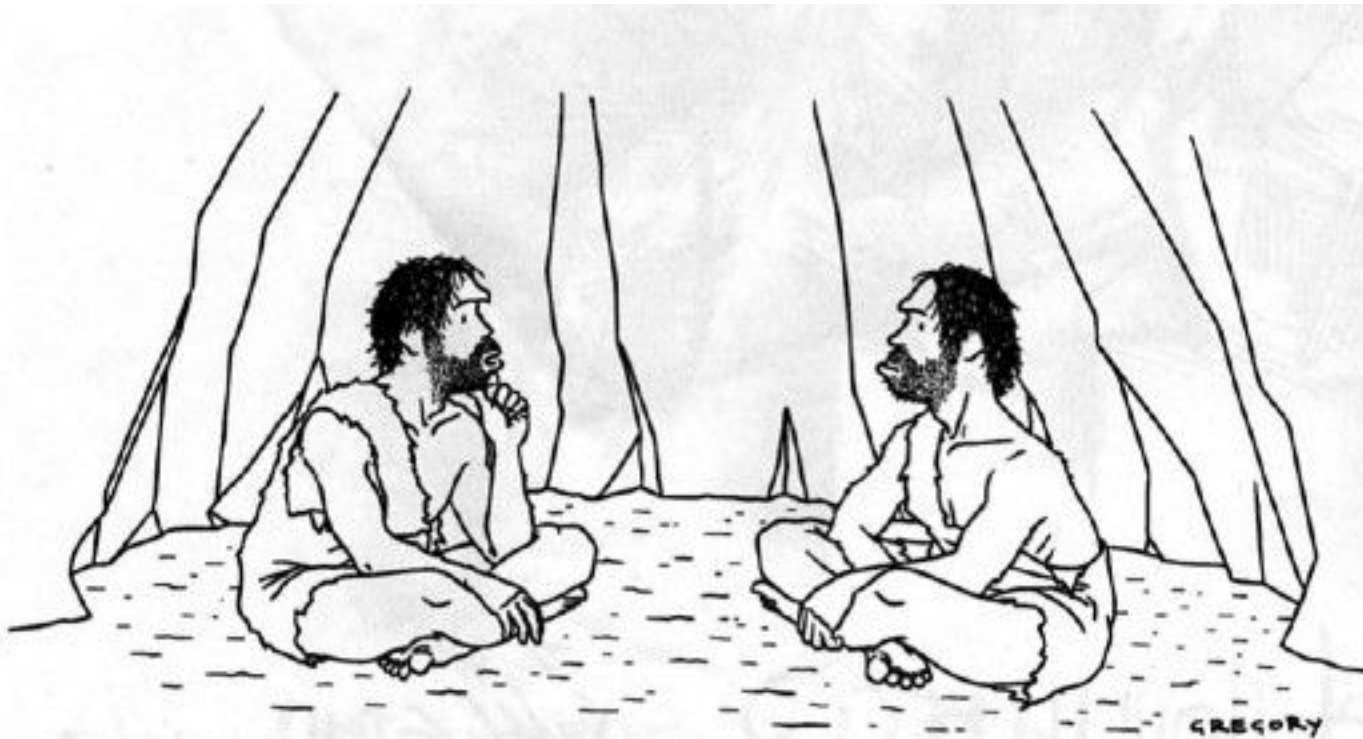
Outline

- ❑ Major legal issues that may affect the development, implementation, and operation of EPHT at the state level
- ❑ General findings of EPHT state law assessment
- ❑ Case study: Montana's efforts to incorporate EPHT into ongoing public health law reform
- ❑ Recommendations and conclusions

Overview

- EPHT programs continue to develop at the state and national levels across the country
- EPHT requires access to robust, accurate, and timely data on:
 - environmental hazards,
 - exposures to environmental hazards, and
 - health outcomes potentially related to exposure to environmental hazards
- Laws play a vital role in the ability to develop and implement a successful EPHT program

EPHT requires coordinated efforts across disciplines



"Something's just not right—our air is clean, our water is pure, we all get plenty of exercise, everything we eat is organic and free-range, and yet nobody lives past thirty."

Categories of Relevant Laws

We were able to find relevant statutes and regulations in the following areas:

- ▣ Public health powers and authorities
- ▣ Environmental powers and authorities
- ▣ Occupational health and safety provisions
- ▣ Surveillance and reporting requirements
- ▣ Health information privacy provisions
- ▣ Data collection, use, sharing, and disclosure provisions
- ▣ Provisions authorizing collaboration between government agencies

Types of Law

- Constitutions
- Statutes
- Regulations
- Memoranda of Understanding
- Contracts
- Treaties
- Also relevant are:
 - Policies
 - Guidelines
 - Standards

The Many Stages of EPHT Data

Acquisition

What data can be acquired? Who can collect it?

Storage

How must data be secured?
What access restrictions apply?

Use

What uses of data are appropriate?
Who may engage in these uses?

Disclosure

What can be disclosed?
To whom?

Applicability of Law

- At the state level, legal provisions needed to acquire, share, analyze, and disclose relevant data for EPHT are often disjointed, ambiguous, and in some cases, inadequate for the task.
- The ability of a state to implement EPHT will hinge on two areas of legal authority:
 - 1) authorization to acquire necessary data to conduct EPHT, and
 - 2) authorization to allow these data to be utilized, shared, or disclosed to achieve the analytical and practical goals of EPHT.

Types of laws that affect EPHT

- EPHT-specific laws
 - Only a few states have taken this approach so far
- EPHT under other laws
 - Laws that facilitate the acquisition of data
 - Laws that allow the use and disclosure of data
 - Laws that restrict the use and disclosure of data

Statutes or regulations that facilitate the acquisition of data for EPHT efforts

- ❑ Several types of statutes or regulations may facilitate the acquisition of the three categories of data—environmental hazards, environmental exposures, public health indicators—integral to EPHT. These include legal provisions that:
 - authorize the collection of relevant health and environmental data by government agencies;
 - require individuals or entities to report specific information to these agencies;
 - allow agencies themselves to access existing databases containing germane information; and
 - protect privacy of individuals and groups consistent with the public health objectives

Statutes or regulations that facilitate the acquisition of data for EPHT efforts

- Within each category, statutes and regulations may or may not allow for the acquisition of specific data (i.e., data related to a specific environmental hazard, environmental exposure, or public health condition).
- To fully implement EPHT, government agencies may need additional authority to acquire needed information.

Statutes or regulations that allow or restrict the use of data for EPHT efforts

Legal authority to use data for EPHT

- Once data are acquired by a government agency, law may or may not dictate whether these data can be used to engage in EPHT activities.
- Efforts to compare environmental hazard data, environmental exposure data, and public health data may be complicated if statutes and regulations do not authorize sharing data between more than one government agency.

Statutes or regulations that allow or restrict the use of data for EPHT efforts

- The evaluation and analysis of EPHT data may require additional follow-up investigations in the potentially affected populations to establish a causal link between environmental exposures and health effects.
 - Whether the law permits data to be used for proactive epidemiological studies could significantly impact the scope of the EPHT program.
 - Law may determine the availability of these data for additional public health activities outside of tracking.
- The law may or may not allow data to be disclosed outside of the state government agency that collected it for purposes of EPHT, for example, to the federal government or private researchers.

Statutes or regulations that allow or restrict the use of data for EPHT efforts

In many cases there is significant ambiguity in the law : Many state laws do not directly focus on the issue of subsequent uses and disclosures of data whether to entities within or outside of the government agency that has the data. The more clearly these issues are addressed in statutory or regulatory language, the more confident a state can be in its ability to engage in EPHT. Vague laws may, however, provide sufficient authority.

Statutes or regulations that allow or restrict the use of data for EPHT efforts

Legal restrictions on use of data for EPHT

- Many laws at the federal and state levels provide substantial privacy and confidentiality protections for information collected and retained by state agencies or other participants in the health system.
- The justifications for these protections may stem from several sources.
 - Privacy and confidentiality laws
 - Informed consent requirements protections on identifiable health and medical data
 - Trade secrets provisions

Statutes or regulations that allow or restrict the use of data for EPHT efforts

- ❑ Respecting these privacy and proprietary concerns encourages individuals, health professionals, and corporations to continue to cooperate with reporting requirements and requests for information vital to a functioning EPHT system.
- ❑ However, efforts to maintain good data stewardship should not be a barrier to EPHT. The relevant statutes and regulations may need to be reformed to balance these concerns.

Montana's Public Health Statute Modernization Project

- ❑ Public health threats and practices have changed.
- ❑ We do not practice PH or medicine with outdated science, we should not practice with antiquated legal authorities.
- ❑ Modernization will:
 - More clearly delineate basic authorities and responsibilities
 - Support modern disease control measures that address contemporary health problems and threats
- ❑ These efforts are consistent with the concepts and goals of EPHT

What are the key areas for modernization?

- ❑ A mission statement for the public health system
- ❑ Major public health powers of state and local agencies
- ❑ Defined standards for conditions of public health importance
- ❑ Procedural due process protections
- ❑ Planning and preparation for public health emergencies
- ❑ EPHT

Relevant Statutes - Montana

- Title 50 of Montana statutes grants public health powers to the Department of Public Health and Human Services.
- Title 75 of Montana statutes authorizes data collection by the Department of Environmental Quality
- Other statutes: Title 53 (Developmental disability monitoring); Title 80 (Pesticide monitoring by Department of Agriculture)
- Other provisions: Sections of the Administrative Code of Montana

Findings - Questions Posed

- ❑ **Can the state environmental agency collect environmental hazard data?**
- ❑ **Can the state public health agency collect health outcome data?**
- ❑ **Can state agencies collect environmental hazard exposure data?**
- ❑ **Can the state environmental agency use, share, or disclose environmental hazard data?**
- ❑ **Can the state public health agency use, share, or disclose health outcome data?**
- ❑ **Can state agencies use, share, or disclose environmental hazard exposure data?**
- ❑ **Can state agencies share data?**

Findings

- ❑ **Can the state environmental agencies collect environmental hazard data?**
- ❑ **Yes.** DEQ is authorized to collect data in designated categories, including indoor and outdoor air pollution, water quality, and waste management. DOA can collect information on pesticides.
- ❑ Potential difficulty: DEQ does not possess general data collection authority so adding new types of data to collect may require changes or additions to the laws authorizing data collection.

Findings

- ❑ **Can the state public health agency collect health outcome data?**
- ❑ **Yes.** DPHHS has broad powers to investigations regarding the “control of diseases and the improvement of public health.” Acquisition of information on cases of developmental disabilities and some occupational exposures is authorized. Montana has a tumor registry.
- ❑ Potential difficulty: Regulations for reportable conditions currently focus on mostly communicable diseases and may need to be updated to include health outcomes linked to environmental factors.

Findings

- ❑ **Can state agencies collect environmental hazard exposure data?**
- ❑ **Maybe.** Montana state laws do not address the collection of environmental hazard exposure data. Arguably exposure investigations could be conducted by DPHHS under the broad public health powers.
- ❑ Potential difficulty: If challenged, the authority to conduct exposure investigations could be undermined. A more explicit provision would alleviate this concern.

Findings

- ❑ **Can the state environmental agency use, share, or disclose environmental hazard data?**
- ❑ **Yes.** Data held by DEQ are generally publicly available.
- ❑ **Potential difficulty:** Some environmental hazard data may be claimed as trade secrets and kept confidential. Confidentiality may apply to information related to air pollution, water quality, and radon levels may be deemed confidential. These provisions are unlikely to seriously affect EPHT efforts.

Findings

- ❑ **Can the state public health agency use, share, or disclose health outcome data?**
- ❑ **Maybe.** Identifiable health data is confidential by default, but may be released by DPHHS if certain criteria are met, including disclosure to another state or local public health agency for purposes of preventing injury from disease.
- ❑ Potential difficulty: Strong confidentiality protections exist related to identifiable health data generally, as well as data from the cancer registry and related to developmental disabilities. It may be preferable to include in law a specific authorization to disclose data for EPHT purposes without consent if appropriate safeguards are in place.

Findings

- ❑ **Can state agencies use, share, or disclose environmental hazard exposure data?**
- ❑ **Maybe.** Montana state laws do not address environmental hazard exposure data. This data would likely be treated like other identifiable health data.
- ❑ **Potential difficulty:** More clarity in the law on this issue would be helpful.

Findings

- ❑ **Can state agencies share data?**
- ❑ **Probably.** The legal infrastructure of Montana does not clearly allow for data sharing between agencies for purposes of EPHT and does not provide for extensive collaboration between DEQ and DPHHS. It also does not prevent this type of sharing except where confidentiality laws intercede. An MOU between these agencies allows some data sharing at present.
- ❑ Less ambiguous laws may strengthen the legal support of EPHT efforts.

Recommendations

- ❑ **Reform the legal framework in Montana to facilitate the implementation of EPHT.** Montana's current legal structure is not conducive to the development and implementation of a comprehensive EPHT system. Possible legal reforms to consider include:
 - ❑ Augmentation of data collection powers related to environmental hazards, environmental exposures, and public health data;
 - ❑ Explicit statutory authorization for EPHT;
 - ❑ Unambiguous legal authority to share all relevant data to conduct EPHT activities;
 - ❑ Reassessment of privacy and proprietary protections on information to appropriately balance these protections with the need to access relevant data for EPHT purposes;
 - ❑ Designation of a centralized government agency responsible for coordinating EPHT efforts; and
 - ❑ Linkage of EPHT with other core public health powers.

Recommendations

- Legal reform could take place:
 - As a component of a comprehensive law reform effort such as the Montana public health law modernization effort
 - Through partial modification of existing statutory or regulatory laws
 - Supplementing the existing legal and policy structure to facilitate EPHT

Future steps

- ❑ States should assess their laws to determine if they possess adequate authority to develop and implement EPHT
- ❑ States should share information about legal best practices and potential problems and solutions
- ❑ Development of additional legal tools (assessment tools, model legislation)

Thank you!

For more information, please contact me:

Lance Gable, JD, MPH

Assistant Professor of Law, Wayne State University Law School
Scholar, Center for Law and the Public's Health at Georgetown
and Johns Hopkins Universities

lancegable@wayne.edu